

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 476

MINUTES OF THE MEETING OF THE CITY COUNCIL

Wichita, Kansas, September 28, 2004
Tuesday, 9:40 A.M.

The City Council met in regular session with Mayor Mayans in the Chair. Council Members Brewer, Fearey, Gray, Lambke, Martz, Schlapp; present.

George Kolb, City Manager; Gary Rebenstorf, Director of Law; Karen Sublett, City Clerk; present.

Motion--carried Mayans moved to approve the September 21, 2004 Minutes. Motion carried 7 to 0.

CONSENT AGENDA

Mayor Mayans Mayor Mayans requested that Item 10, Transfer of Funds to Ice Rink Management Fund, be pulled for discussion.

Motion--
--carried Mayans moved that the Consent Agenda, except Item 10, be approved as presented. Motion carried 7 to 0.

BOARD OF BIDS

REPORT OF THE BOARD OF BIDS AND CONTRACTS DATED SEPTEMBER 27, 2004.

PUBLIC WORKS DEPARTMENT/ENGINEERING DIVISION: Sewers, Paving and Water Mains as per specifications.

Bids were opened September 21, 2004, pursuant to advertisements published on:

First and Second Street West Outfall - along First and Second Streets from West Street to Athenian, thence to the river. (562-864401/660795/864401) Traffic to be maintained during construction using flagpersons and barricades; and Water main replacement along Athenian - from Second Street to McLean. (448-89905/634035/773206) Traffic to be maintained during construction using flagpersons and barricades. (Districts VI, IV)

Wildcat Construction - \$5,365,593.00 (Corrected)

Kellogg Avenue (US 54)/Rock Road Interchange, Part 4: Grading, Concrete Pavement, Utilities and Seeding (temporary) for Armour Road north of Kellogg (472-84094/702341/401352) Traffic to be maintained during construction using flagpersons and barricades. (District II)

Cornejo & Sons Construction - \$912,162.03

City View from Maple to the southerly line of City View; Sheriac Circle (Lots 1 through 13, and 20 through 22, Block B), from the west line of City View to and including cul-de-sac; Sheriac Court from the north line of Sheriac Circle to and including cul-de-sac; sidewalk on one side of City View to serve Shadow Woods Addition (north of Maple, west of 135th Street West) (472-83759/765890/490003) Does not affect existing traffic. (District V)

APAC – Kansas Inc. - \$199,330.65

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 477

2004 Planeview Sanitary Sewer Reconstruction, Phase 2 (south of Pawnee, east of Hillside) (468-83890/622241/644349) Traffic to be maintained during construction using flagpersons and barricades. (District III)

WB Carter Construction - \$149,000.00

Lateral 32, Main 2 Southwest Interceptor Sewer to serve Bartlow Second Addition (east of Seneca, north of 47th Street North) (468-83847/744070/480758) Traffic to be maintained during construction using flagpersons and barricades. (District IV)

Wichita Excavation - \$6,000.00 (Corrected)

2004-2005 Traffic Signalization Program, Phase IV: Install Traffic Signals at 21st Street North & 127th Street East (472-84072/706911/204377) Traffic to be maintained during construction using flagpersons and barricades. (District II)

Sims Electric Service - \$59,585.00

Elm, Sheridan to Mt. Carmel to serve Simpson's Addition, S.A. King's Addition, Lemon 4th Addition (west of Meridian, north of Central) (472-83950/765867/490978) Traffic to be maintained during construction using flagpersons and barricades. (District VI)

Kansas Paving Company - \$42,246.75

Motion--

Mayans moved that the contracts be awarded as outlined above, subject to check, same being the lowest and best bid within the Engineer's construction estimate, and the and the necessary signatures be authorized. Motion carried 7 to 0.

--carried

VARIOUS DEPARTMENTS/VARIOUS DIVISION: Concrete Requirements.

CMC Concrete Materials Co. - \$158,262.50*

*Estimate – Contract approved on unit cost basis; refer to attachments.

Motion--

Mayans moved that the contract(s) be awarded as outlined above, same being the lowest and best bid, and the necessary signatures be authorized. Motion carried 7 to 0.

--carried

CMB

APPLICATIONS FOR LICENSES TO RETAIL CEREAL MALT BEVERAGES:

<u>Renewal</u>	<u>2004</u>	<u>(Consumption on Premises)</u>
Armando De Santiago	El Perron Enterprise Inc. *	3824 East Harry
Teresa Vasquez	El Patio Inc.*	424 East Central
<u>New Operator</u>	<u>2004</u>	<u>(Consumption on Premises)</u>
David Pool	MacDonald Municipal Golf Course*	840 North Erie
<u>Special Event</u>	<u>October 2, 3, 2004</u>	
Gene Stevens	Joe Stevens Vending Rugby Tournament (Men's)	1224 Riverside

Motion--

Mayans moved that the licenses, subject to Staff review and approval, be approved. Motion carried 7 to 0.

--carried

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 478

PRELIMINARY ESTS. PRELIMINARY ESTIMATES:

- a) Water distribution system east of Broadway, north of 37th Street South. (448-89924/635654/764708). Traffic to be maintained during construction using flagpersons and barricades. (District III) - \$275,000
- b) Lateral 2, Main 21 Southwest Interceptor Sewer to serve Gray's 5th Addition - north of 37th Street South, east of Hoover. (468-83431/744084/480772) Does not affect existing traffic. (District IV) - \$163,000
- c) Water distribution system to serve Gray's 5th Addition - north of 37th Street South, east of Hoover. (448-89681/735215/470885) Does not affect existing traffic. (District IV) - \$112,000
- d) Water distribution system to serve Shady Ridge Addition - south of Central, east of Ridge. (448-89978/735204/470874) Does not affect existing traffic. (District V) - \$29,000
- e) Shady Court, serving Lots 26 through 36, Block 1, from the west line of Shady Lane to and including the cul-de-sac to serve Shady Ridge Addition - south of Central, east of Ridge. (472-84051/765888/490001) Does not affect existing traffic. (District V) - \$75,000
- f) Storm Water Sewer #533 to serve Regency Park Addition - south of 29th Street North, west of Greenwich. (468-83066/751375/485266) Does not affect existing traffic. (District II) - 178,000
- g) 28th Street North from the west line of Lot 4, Block 1, to the west line of Greenwich Road to serve Regency Park Addition - south of 29th Street North, west of Greenwich. (472-83803/765895/490008) Does not affect existing traffic. (District II) - \$117,000
- h) Lateral 5, Main 13 Four Mile Creek Sewer to serve Hawthorne Third Addition - north of 21st Street North, east of 127th Street East. (468-83870/744083/480771) Does not affect existing traffic. (District II) - \$122,000

Motion--carried Mayans moved that the Preliminary Estimates be received and filed. Motion carried 7 to 0.

SHADOW WOODS PAVE STREETS IN SHADOW WOODS ADDITION, WEST OF 135TH STREET WEST, NORTH OF MAPLE. (DISTRICT V)

Agenda Report No. 04-0945

On May 6, 2003, the City Council approved a Petition to pave streets in Shadow Woods Addition. An attempt to award a contract within the budget set by the petition was not successful. The developer has submitted a new Petition with an increased budget. The signature on the new Petition represents 100% of the improvement district.

The project will serve a new residential development located west of 135th Street West, north of Maple.

The existing Petition totals \$215,000. The new Petition totals \$245,000. The funding source is special assessments.

State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Motion--carried Mayans moved that the Petition be approved and the Resolution adopted. Motion carried 7 to 0.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 479

RESOLUTION NO. 04-537

A Resolution amending Resolution No. 03-206 pertaining to improve City View from Maple to the southerly line of City View. Sheriac Circle (Lots 1 through 13, and 20 through 22, Block B), from the west line of City View to and including cul-de-sac, on Sheriac Court from the north line of Sheriac Circle to and including cul-de-sac. Sidewalk constructed on one side of City View, (west of 135th Street West, north of Maple) 472-83759, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

THE PLAZA

SANITARY SEWER AND STORM WATER DRAIN IMPROVEMENTS TO SERVE PART OF THE PLAZA AT CHERRY CREEK HILLS ADDITION, EAST OF ROCK, NORTH OF OAK KNOLL. (DISTRICT II)

The Petitions have been signed by one owner, representing 100% of the improvement districts.

These projects will provide sanitary sewer and drainage improvements to an undeveloped commercial area located east of Rock, north of Oak Knoll.

The Petitions total \$81,000. The funding source is special assessments.

State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Motion--carried

Mayans moved that the Petitions be approved and the Resolutions adopted. Motion carried 7 to 0.

RESOLUTION NO. 04-538

Resolution of findings of advisability and Resolution authorizing construction of Lateral 35, Main 17, War Industries Sewer, 468-83898 (east of Rock, north of Oak Knoll) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

RESOLUTION NO. 04-539

Resolution of findings of advisability and Resolution authorizing improving Storm Water Drain No. 240, 468-83899 (east of Rock, north of Oak Knoll) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

REGENCY LAKES

SANITARY SEWER AND WATER DISTRIBUTION SYSTEM TO SERVE PART OF REGENCY LAKES COMMERCIAL 2ND ADDITION, NORTH OF 21ST STREET, WEST OF GREENWICH. (DISTRICT II)

Agenda Report No. 04-0947

The Petitions have been signed by one owner, representing 100% of the improvement districts.

These projects will provide sanitary sewer and water service to a new commercial development located north of 21st, west of Greenwich.

The Petitions total \$210,000. The funding source is special assessments.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 480

State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Motion--carried

Mayans moved that the Petitions be approved and the Resolutions adopted. Motion carried 7 to 0.

RESOLUTION NO. 04-540

Resolution of findings of advisability and Resolution authorizing construction of Water Distribution System Number 448-90006, (north of 21st Street, west of Greenwich) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

RESOLUTION NO. 04-541

Resolution of findings of advisability and Resolution authorizing construction of Lateral 6, Main 26, Westlink Interceptor Sewer, 468-83895, (north of 21st Street, west of Greenwich) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

STREET CLOSURES CONSIDERATION OF STREET CLOSURES/USES.

Agenda Report No. 04-0948

In accordance with the Special Events Procedure, event sponsors are to notify adjacent property owners and coordinate arrangements with Staff, subject to final approval by the City Council.

The following street closure requests have been submitted:

Kicks for Kids Walk/Run, Saturday, October 30, 7:00 am – 1:00 pm

- § Nims Street – Stackman to Murdock (traffic circle will not be closed completely, but will be blocked on the north & west
- § Stackman – from Nims to Murdock (near Gilman)
- § Remainder along Cowtown and on bike paths

Historic Midtown Fall Walking Tour, Sat. Oct 9, 11am – 5:00 pm to

Sun, Oct 10, 12:00 pm – 5:00 pm

- § Back Bay Blvd. From Waco to 9th

Annual Journey 2gether 8K Run & 2K Walk, Saturday, October 9th, 6:30 pm – 7:30 pm

- § 6:30 – 6:35 – Eastbound lanes of Douglas from Independent School to West Parkway
- § 6:35 – 8:00 – 1 eastbound lane of Douglas from Independent School to Linden
- § 6:30 – 8:00 – West Parkway from Douglas to Central
- § 6:30 – 8:00 – 1 eastbound lane of Central from West Parkway to Linden
- § 6:30 – 8:00 - West side of Linden from Central to Douglas
- § 6:30 – 8:00 – Douglas Parkway from Linden to East Parkway
- § 6:30 – 7:30 – East Parkway from Douglas Parkway to Sequoia
- § 6:30 – 7:30 – Laurel from Sequoia to Central Parkway
- § 6:30 – 7:30 – Central Parkway from Laurel to Linden
- § 6:30 – 7:30 – One lane of west side of Linden from Central Parkway to Sequoia

25th Annual KAKE-TV/Wichita Marathon Race, Sunday, October 17, 9:30 am – 2:00 pm

- § 9:45 – 2:00 – Far south lane of Douglas from I-135 to Mead
- § 9:45 – 2:00 – Mead from Douglas to 2nd
- § 10:00 – 2:00 – 2nd from Mead to parking garage exit on west side of plaza

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 481

Police security is arranged to remove blockades as necessary to allow emergency vehicle access during entire designated time period

Inasmuch as possible, event sponsors are responsible for all costs associated with special events.

Motion--

Mayans moved that the request subject to: (1) Event sponsors notifying every property and/or business adjoining any portion of the closed street; (2) Coordination of event arrangements with City Staff; (3) Hiring off-duty public safety officers as required by the Police Department; (4) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; (5) Submitting a Certificate of Insurance evidencing general liability insurance which covers the event and its related activities, including the naming of the City as an additional insured with respect to the event's use of the closed City streets be approved. Motion carried 7 to 0.

--carried

EQUUS BED

EQUUS BED RECHARGE PROJECT-U.S. GEOLOGICAL SURVEY JOINT FUNDING AGREEMENT.

Agenda Report No. 04-0949

On September 9, 1997, City Council approved a Joint Funding Agreement with the United States Department of Interior, Geological Survey (USGS). The Agreement allowed the USGS to assist the City in collecting and analyzing water samples needed to monitor the success and effects of the Equus Beds Recharge Demonstration Project. On June 6, 2000, City Council approved an Agreement with the USGS that included analyzing water samples from the Index Well network that was established to help monitor the impact of the Aquifer Storage and Recovery Project. The Agreement covered fiscal years 2000-2005.

Major components of the Aquifer Storage and Recovery Project are measuring the water quality in the Little Arkansas River, bank storage water, and the effects of using that water to recharge the Equus Beds Wellfield. The locations, frequencies and parameters measured during the sampling program have been developed in cooperation with the Kansas Department of Health and Environment, the Environmental Protection Agency, the Bureau of Reclamation and the Groundwater Management District. The USGS has played a significant role in providing water-quality information associated with this project.

Tasks included are:

1. Continuation of the groundwater level mapping program (begun in 1940) providing vital information about changes in groundwater levels and water storage capacity in the Equus Beds
2. Measuring groundwater quality in the Index Wells that have been established to observe water quality in the wellfield
3. Flow measurement and water sampling of four sites on the Little Arkansas River, periodic sampling and analysis of diversion water and recharge water used as part of Phase I of the Aquifer Storage and Recovery Project
4. Placing data obtained on a web site hosted and maintained by the USGS and
5. Preparation of technical reports that provide analysis of the data collected.

Major benefits of the program include providing information that can be used to design and operate facilities to the best advantage of the environment and the aquifer, and providing the regulatory agencies, as well as the public, the benefit of having accessible near real-time information from a reliable, impartial source to evaluate environmental impact and to minimize any negative impacts.

To implement this project in FY 2006, USGS is proposing that the Agreement be modified to terminate the project. The USGS will do most of the sampling and analysis, with the Water and Sewer Laboratory doing part of the analysis.

Total cost of the program will be \$5,560,200 over the six-year period starting in fiscal year 2005 through fiscal year 2010. The USGS has offered to fund 31 percent of program, leaving the City to fund 69 percent of the costs. Modifying the Agreement will reduce the City's participation by

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 482

\$729,758. Funding for the City's share of the expenses will come from Water Supply Plan Phase III (CIP W-549) that has available funds of over \$7.6 million. Costs will be allocated as shown:

	FY05	FY06	FY07	FY08	FY09	FY10	TOTAL
Total Costs	\$838,600	\$871,000	\$906,700	\$943,000	\$980,400	\$1,019,700	\$5,560,200
City Costs	\$578,600	\$601,800	\$626,700	\$648,000	\$675,400	\$704,700	\$3,835,200
USGS Funds	\$260,000	\$270,000	\$280,000	\$295,000	\$305,000	\$315,000	\$1,725,000

City Council authorization is required for Agreements of \$10,000 or more.

Motion--
--carried

Mayans moved that the Joint Funding Agreement and the Amendment to Joint Funding Agreement be approved and the necessary signatures authorized. Motion carried 7 to 0.

COWSKIN CREEK

COWSKIN CREEK CHANNEL IMPROVEMENTS: KELLOGG TO MAPLE. (DISTRICT V)

Agenda Report No. 04-0950

The planned flood protection project on the Cowskin Creek between Kellogg Avenue and Maple Street will require the acquisition of nine tracts. Due to project funding sources, these tracts require acquisition and relocation pursuant to the Uniform Relocation Assistance and Property Acquisition Act. The tracts include both residential and commercial properties.

Proposals to provide acquisition and relocation services were solicited from qualified firms. Grubb & Ellis/Martens Commercial Group LLC was selected from among the proposals by the review committee based on qualifications and the lowest cost. Based on their proposal, it is estimated that \$17,500 will be sufficient to complete the assignment.

Funding is available within the project budget to fund the proposed increase. Project costs will be funded with general obligation bonds.

Motion--
--carried

Mayans moved that the contract be approved and the necessary signatures authorized. Motion carried 7 to 0.

TALKING BOOKS

BLIND AND PHYSICALLY HANDICAPPED TALKING BOOKS.

Agenda Report No. 04-0951

The Wichita Public Library is one of six agencies that deliver library service to blind and physically handicapped residents of Kansas through contracts with the Kansas State Library. The Wichita site delivers service to eligible customers from all of Sedgwick County and fifteen counties in Southeast Kansas. Although Wichita's participation as a contracting agency has been in place for many years, annual contracts renewing the relationship with the State Library are required because federal funds are included in the contract payment.

Wichita's ability to house a sub-regional library for the blind and physically handicapped allows the Library to enhance service to customers with special needs. While most users of this service must rely on toll-free phone and mail access to the library service, Wichita's customers have the added benefit of receiving walk-in service from Wichita's Central branch library. Senior centers, retirement and nursing homes, special education centers and other agencies also benefit from having the sub-regional staff available locally to promote and/or present training about this program. The contract and budget were reviewed and endorsed by the Library Board of Directors during their September 21, 2004 meeting.

The grant includes a base payment with supplemental funds divided by the share of the statewide service delivery. No local match is required. The Wichita contract for the 2004-2005 year will be \$113,988, an increase of 4.5% from the previous year. The budget will be enhanced by an additional \$2,143 in funding from the South Central Kansas Library System.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 483

Motion--
--carried

Mayans moved that the 2004-2005 Talking Books Service contract and budget be approved and the necessary signatures authorized. Motion carried 7 to 0.

UNION PACIFIC

PROPERTY ACQUISITION: PORTIONS OF THE ABANDONED UNION PACIFIC RAIL CORRIDOR FOR THE MIDTOWN GREENWAY. (DISTRICT VI)

Agenda Report No. 04-0952

In 1999, the Union Pacific Railroad abandoned the rail corridor that runs from Central Avenue and Wichita Street to Broadway and 15th Street North. Through this abandonment, rights to the corridor reverted to the adjacent property owners on both sides. The City has reviewed the former corridor and decided that it could be utilized to develop a greenway/linear park connecting Horace Mann, Irving and Park Schools and the bicycle path on Central. In April 2002, the City Council approved \$74,000 in CDBG funding to acquire portions of the abandoned Union Pacific corridor from Central to 15th Street from adjacent property owners.

Due to their size and configuration, the tracts being acquired are not developable by themselves. The majority of the tracts abut developed properties but lie outside the fenced, defined boundaries of the properties. The purchase price of similar tracts was reviewed to estimate market value. These amounts were offered to the adjacent property owners with several accepting the offers. The contracts represent two tracts with a total value of \$1,500.

A budget of \$1,600 is requested, consisting of \$1,500 for acquisition and \$100 for recording fees. The funding source is previously approved CDBG funds.

The Law Department has approved the contracts as to form.

Motion--
--carried

Mayans moved that the Budget and the Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

SURGICARE

DEED OF CORRECTION, SURGICARE OF WICHITA, INC. (DISTRICT I)

Agenda Report No. 04-0953

In 1973 and 1978, the Wichita City Council approved the issuance of two Series of Industrial Revenue Bonds, in aggregate principal amount of \$751,000, to finance a medical facility for the performance of minor surgical procedures (the "Project"), located on the corner of Lorraine and Murdock Streets in Wichita. In 1984, the City approve the assignment of the Project leases from Minor Surgery Center of Wichita, Inc., to Medical Care of Wichita, Inc., as successor Tenant. Medical Care of Wichita, Inc., changed its name to SURGICARE OF WICHITA, INC., in 1985, and the original tenant entity dissolved in 1987.

In 1992, following the retirement of the Bonds, the City erroneously executed a deed of conveyance in the name of the dissolved entity, Minor Surgery Center of Wichita, Inc. This deed was recorded, and title to the Project still shows of record in the name of the dissolved entity. The conveyance should have been drawn in the name of SURGICARE OF WICHITA, INC., the proper grantee (i.e., the entity holding the right to take title under the purchase option in the Project leases). SURGICARE OF WICHITA, INC., has requested that the City execute and deliver a Deed of Correction in its favor, to correct the error in the 1992 deed.

Consistent with its obligations under the Bond leases, the City should execute and deliver the requested Deed of Correction, to complete the conveyance of the property to SURGICARE OF WICHITA, INC.

The purchase price and other consideration provided for under the Bond leases were provided by the tenant in 1992, so that no additional payment is due from SURGICARE OF WICHITA, INC. to complete the corrected conveyance.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 484

It is appropriate for the City to convey the Project property to SURGICARE OF WICHITA, INC. by execution and delivery of the Deed of Correction.

Motion--
--carried

Mayans moved that the Resolution approving the Deed of Correction be adopted and the necessary signatures authorized. Motion carried 7 to 0.

RESOLUTION NO. 04-542

A Resolution authorizing the City of Wichita, Kansas, to correct a conveyance of certain real property to name Surgicare of Wichita, Inc., as grantee, and prescribing the form of and authorizing the execution and delivery of a Deed of Correction in connection therewith, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

WATERWALK

WATERWALK AREA PHASE II ENVIRONMENTAL SITE ASSESSMENT.

Agenda Report No. 04-0954

A Phase I environmental site assessment of the Water Walk development area, has indicated the need for a more in depth study. The Phase I assessment consisted of review of prior sampling data and examination of previous land use for the probability for contamination. The City's consultant has recommended a Phase II assessment, consisting of site-specific sampling to determine the presence or absence of soil or groundwater contamination. Such an investigation is a routine exercise of due diligence. The Kansas Department of Health and Environment administers a brownfield program that would pay the cost of the study, estimated at between \$12,000 and \$15,000.

Use of the KDHE program would not only save the City \$12,000 to \$15,000 in investigation costs, but would also allow the Phase II assessment to be completed in a more timely manner. Application for KDHE funding can be completed by Public Works and Environmental Health Staff, and requires only City Council approval.

There is no cost to the City; KDHE will conduct and fund the study.

The Department of Law will review the application prior to submission.

Motion--
--carried

Mayans moved that the application for KDHE funding of the Phase II investigation be approved and Staff be authorized to proceed with the project. Motion carried 7 to 0.

(Item 10) ICE RINK

TRANSFER OF FUNDS TO ICE RINK MANAGEMENT FUND.

Kelly Carpenter

Acting Finance Director reviewed the item.

Agenda Report No. 04-0944b

Over the past several years, attendance at the Wichita Ice Sports Center has declined, particularly in the area of public skating. Funds available for the payment of ice rink operations has slowly diminished, to the point that it is now necessary to transfer funds to the Ice Rink Management Fund in order to pay past due bills for vendors due to the short term cash flow the facility has been experiencing for the past several months.

Under the terms of the Ice Rink Management Agreement, all revenues received by Canlan Ice Sports in connection with the Wichita Ice Sports Center are considered funds of the City of Wichita and are deposited daily in the City's bank account and credited to the Ice Rink Management Fund. All expenses of any kind incurred by the operation of the Ice Sports Center are likewise expenses of the City of Wichita and are paid from funds accumulating in the Ice Rink Management Fund. Canlan pays current operating expenses and submits invoices and proof of payment to the City for reimbursement.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 485

Canlan has submitted to the City of Wichita for the past few months several invoices for reimbursement of utility expenses, payroll reimbursement, and other vendor expenses that they have incurred. As of October 1, 2004 Ice Sports will have \$16,838.98 in outstanding or past due vendor invoices that have local or Wichita billing addresses. They will have \$27,644.54 in outstanding or past due vendor invoices that have non-local billing addresses for a total of \$44,483.52 in outstanding or past due vendor invoices.

Canlan is entitled to a management fee of 5% of gross revenue, payable solely from operating profits. Canlan's management fee accrues during months when operating expenses exceed revenues. To date, Canlan's management fee accrual amounts to approximately \$70,000, which has not been paid.

To ensure there are adequate funds in the Ice Rink Management Fund to pay expenses and based on Canlan's cash flow analysis, Staff recommends the transfer of \$16,838.98 dollars to the Ice Rink Management Fund from the general fund appropriated reserves. This amount will be added to the \$100,000 working capital deposit that was initially made in 1996.

The Project Development and Management Agreement between the City and Canlan Ice Sports, as amended, provides that upon the request of Canlan, the City shall deposit funds in the Ice Rink Management Fund if needed to ensure that adequate funds are available to pay operating expenses in a timely manner, subject to the Cash Basis Law. City Council approval will ensure compliance with the Cash Basis Law and the City's policy requiring Council approval of contractual payments in excess of \$10,000.

Motion--

Mayans moved that the transfer of \$16,838.98 from the General Fund Reserves to the Ice Rink Management Fund to pay the outstanding or past due vendor invoices that have local or Wichita billing addresses be approved; and that the transfer of an additional \$27,644.54 from the General Fund Reserves to the Ice Rink Management Fund to pay outstanding or past due vendor invoices that have non-local billing addresses be approved. Motion carried 7 to 0.

-- carried

ORDINANCES

SECOND READING ORDINANCES: (FIRST READ SEPTEMBER 21, 2004)

- a) ZON2004-00032 - generally located at the southeast corner of Douglas and LuLu, 1401 East Douglas. (District I)

ORDINANCE NO.46- 252

An Ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by City of Wichita Code Section 28.04.210, read for the second time. Mayans moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans. ZON 2004-00032

- b) Crime of intimidation of a victim or witness.

ORDINANCE NO.46- 253

An Ordinance creating Section 5.15.010 of the Code of the City of Wichita, Kansas, pertaining to the creation of the crime of intimidation of a victim or witness, read for the second time. Mayans moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

CITY COUNCIL PROCEEDINGS

JOURNAL 181

SEPTEMBER 28, 2004

PAGE 486

RECESS

Mayans moved that the City Council recess into Executive Session at 12:15 p.m. to consider consultation with legal counsel on matters privileged in the Attorney-Client relationship relating to: Pending litigation; potential litigation and legal advice and that the Council return from Executive Session no earlier than 12:30 p.m. and reconvene in the first floor boardroom of City Hall. Motion carried 7 to 0.

--carried

RECONVENE

The Council reconvened in the first floor boardroom of City Hall at 12:38 p.m. Mayor Mayans announced that no action was taken.

Motion--

Mayans moved that the executive session be closed and that the City Council Meeting be adjourned. Motion carried 7 to 0.

-- carried

Adjournment

The City Council meeting adjourned at 12:40 p.m.

Karen Sublett
City Clerk